

BRB Nos. 08-0424 BLA and
08-0424 BLA-A

R.T.)	
(On behalf of M.T.))	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	
LYLES COAL COMPANY, INCORPORATED)	DATE ISSUED: 03/11/2009
)	
and)	
)	
OLD REPUBLIC INSURANCE COMPANY)	
)	
Employer/Carrier-Respondents)	
Cross-Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Alice M. Craft,
Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for
employer/carrier.

Emily Goldberg-Kraft (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank
James, Associate Solicitor; Michael J. Rutledge, Counsel for
Administrative Litigation and Legal Advice), Washington, D.C., for the
Director, Office of Workers' Compensation Programs, United States
Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals and employer¹ cross-appeals the Decision and Order Denying Benefits (2004-BLA-05198) of Administrative Law Judge Alice M. Craft issued on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).² The administrative law judge found that employer was the responsible operator and she credited the miner with 11.12 years of coal mine employment. The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits.

Claimant appeals, asserting that the administrative law judge erred in failing to find the existence of pneumoconiosis based on the positive x-ray evidence and the medical opinion of Dr. Simpao.³ Claimant contends that the administrative law judge also erred in failing to find that the miner was totally disabled from his usual coal mine work. Claimant maintains that because the administrative law judge did not credit the opinion of Dr. Simpao as to whether the miner was totally disabled, the Board must conclude that the Director, Office of Workers' Compensation Programs (the Director), failed to provide the miner with a complete pulmonary evaluation as required by the Act. The Director responds to claimant's appeal, and asserts that the miner received a complete pulmonary evaluation. The Director, however, takes no position on the merits of claimant's entitlement to benefits based on the miner's claim. Employer responds to

¹ Lyles Coal Company and Old Republic Insurance Company are collectively referred to as "employer" in this decision.

² The miner, M.T., filed a claim for benefits on October 16, 2002, which was denied by the district director on September 18, 2003. Director's Exhibits 2, 30. The miner requested a hearing, and the case was transferred to the Office of Administrative Law Judges (OALJ) for a formal hearing. While the case was pending with OALJ, the miner died on July 25, 2004. The administrative law judge issued her Decision and Order Denying Benefits on the miner's claim on January 30, 2008, which is the subject of this appeal. Claimant, R.T., is the widow of the miner and is pursuing this claim on her husband's behalf.

³ Dr. Simpao examined the miner at the request of the Department of Labor on January 10, 2003. Director's Exhibit 8.

claimant's appeal, urging affirmance of the denial of benefits. Employer has also filed a cross-appeal, challenging the administrative law judge's finding that it is the responsible operator and argues that liability for benefits should transfer to the Black Lung Disability Trust Fund.⁴

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.⁵ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits based on the miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the miner's pneumoconiosis arose of out coal mine employment, that the miner was totally disabled by a respiratory or pulmonary impairment, and that the miner's total disability was due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Claimant generally contends that the administrative law judge erred in finding that the weight of the x-ray evidence was negative for pneumoconiosis at Section 718.202(a)(1). Claimant states that the administrative law judge "relied almost solely on the qualifications of the physicians providing the x-ray interpretations," although he is not required to do so, and "placed substantial weight on the numerical superiority of x-ray interpretations," and that she also "may have 'selectively analyzed' the x-ray evidence." Claimant's Brief at 3. Claimant's arguments are without merit.

In this case, the record in the miner's claim consists of four readings of two x-rays dated January 10, 2003 and July 8, 2003. The January 10, 2003 x-ray was read as positive for pneumoconiosis by Dr. Simpao, an A reader, and as negative by Dr. Poulos,

⁴ We affirm, as unchallenged by the parties on appeal, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (3). See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 13.

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner's coal mine employment was in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibits 3, 5.

dually qualified as a Board-certified radiologist and B reader. Director's Exhibits 8, 27. The July 8, 2003 x-ray was read as negative for pneumoconiosis by Dr. Dahhan, a B reader, and by Dr. Poulos. Director's Exhibit 28; Employer's Exhibit 1.

Contrary to claimant's contention, the administrative law judge properly considered the credentials of the readers, and permissibly accorded greatest weight to Dr. Poulos's negative reading of the January 10, 2003 x-ray based on his superior qualifications as a dually qualified radiologist. *See Staton v Norfolk & Western Railroad Co.*, 65 F.3d 55, 58, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); Decision and Order at 12. Because the administrative law judge properly determined that the January 10, 2003 and July 8, 2003 x-rays are negative for pneumoconiosis, we affirm her finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1).

Claimant next challenges the administrative law judge's finding that the evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). Claimant states that the administrative law judge "appears" to have interpreted medical tests and substituted her own opinion for that of a physician. Claimant's Brief at 5. Claimant asserts that the administrative law judge "may not discredit the opinion of a physician whose report is based on a positive x-ray interpretation contrary to the administrative law judge's findings." *Id.* Claimant maintains that because Dr. Simpao provided a well reasoned opinion that the miner had pneumoconiosis, based on the results of his physical examination, the miner's symptoms and work history, the administrative law judge "should not have rejected it for the reasons she provided." *Id.*

We reject claimant's assertion that the administrative law judge erred in her treatment of Dr. Simpao's opinion. As noted by the administrative law judge, the record consists of three medical opinions. Dr. Simpao diagnosed that the miner suffered from pneumoconiosis, while Drs. Dahhan and Branscomb opined that the miner did not suffer from the disease.⁶ Director's Exhibits 8, 28; Claimant's Exhibit 1; Employer's Exhibit 3. Contrary to claimant's contention, the administrative law judge did not reject Dr. Simpao's opinion because it was based on a positive x-ray, which was at odds with the

⁶ Dr. Simpao diagnosed pneumoconiosis based on his positive reading of the January 10, 2003 x-ray and his interpretation of the results of the miner's pulmonary function testing on January 10, 2003, as showing a severe obstructive respiratory condition. Director's Exhibit 8. Dr. Dahhan examined the miner at the request of employer on July 8, 2003 and opined that the objective testing was insufficient to justify a diagnosis of pneumoconiosis. Director's Exhibit 28. Dr. Branscomb prepared a report based on his review of certain medical records and also opined that the miner did not have pneumoconiosis. Employer's Exhibit 3.

administrative law judge's finding that a preponderance of the x-ray evidence was negative for pneumoconiosis at Section 718.202(a)(1). Rather, the administrative law judge permissibly determined that Dr. Simpao's diagnosis of pneumoconiosis was "weakened by his reliance on his own positive x-ray interpretation" because that same film was read as negative for pneumoconiosis by a more qualified radiologist, thus calling into question the reliability of Dr. Simpao's opinion. *White v. Director, OWCP*, 6 BLR 1-368 (1983); Decision and Order at 13. The administrative law judge also found that Dr. Simpao based his opinion, in part, on pulmonary function tests that were invalidated:

Although Dr. Simpao also explained his diagnosis on the basis of his examination findings and symptoms, the pulmonary function tests that his opinion relied upon in part were also invalidated due to poor cooperation, excessive hesitation, and variation, of more than [five] percent.

Decision and Order at 13.

In contrast to her consideration of the opinion of Dr. Simpao, the administrative law judge credited Dahhan's opinion. The administrative law judge stated that she "deferred" to the opinion of Dr. Dahhan, that the miner did not have clinical or legal pneumoconiosis, because "Dr. Dahhan conducted a physical examination very near the time of Dr. Simpao's examination, he is a Board-certified Internist and Pulmonologist, and his opinion is better supported by the objective data and underlying documentation."⁷ *Id.* The administrative law judge also found that Dr. Dahhan's opinion was supported by Dr. Bransomb's opinion that the miner did not have pneumoconiosis. *Id.*

Because the administrative law judge has discretion as the trier-of-fact in rendering credibility determinations, and because she explained the basis for her finding with respect to Dr. Simpao, we reject claimant's arguments. See *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*). Furthermore, as claimant has not identified any specific legal or factual error with respect to the weight accorded the opinions of Drs. Dahhan and Branscomb, we affirm, as supported by substantial evidence, the administrative law judge's finding that claimant failed to establish the existence of either

⁷ The administrative law judge found that "Dr. Simpao is the Medical Director of the Coal Workers' Respiratory Clinic, but it does not appear from his curriculum vitae that he is Board-certified." Decision and Order at 13. The administrative law judge found that both Drs. Dahhan and Branscomb are Board-certified in Internal Medicine and that Dr. Dahhan is also Board-certified in Pulmonology. Decision and Order at 13.

clinical or legal pneumoconiosis pursuant to Section 718.202(a)(4). *See Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Etzweiler v. Cleveland Brothers Equipment Co.*, 16 BLR 1-38 (1992); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

As we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement, *see Anderson*, 12 BLR at 1-112, it is not necessary that we further address claimant's contention that the administrative law judge erred in failing to find that the miner was totally disabled, or her contention that the miner did not receive a complete pulmonary evaluation on the issue of total disability.⁸ Even if the miner did not receive a complete pulmonary evaluation with respect to the issue of total disability, as alleged, benefits would still be precluded because the evidence did not establish that the miner had pneumoconiosis. *Id.*

⁸ Because we affirm the administrative law judge's denial of benefits, it is not necessary that we address employer's argument that the administrative law judge erred in finding that it is the responsible operator.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge